IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2977 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE
==
1. Whether Reporters of Local Papers may be allowed   : NO
    to see the judgements?

2. To be referred to the Reporter or not?   : NO

3. Whether Their Lordships wish to see the fair copy   : NO
    of the judgement?

4. Whether this case involves a substantial question   : NO
    of law as to the interpretation of the Constitution
    of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?   : NO

    AAMIRKHAN MEHBOOBKHAN PATHAN
Versus
    COMMISSIONER OF POLICE   AHMEDABAD

    Appearance:
        MR ANIL S DAVE for Petitioner
        MR HH PATEL, AGP, for Respondent No. 1, 2, 3

    CORAM : MR.JUSTICE A.L.DAVE
    Date of decision: 23/11/1999

ORAL JUDGEMENT
    1. The petitioner was detained under the provisions
    of Gujarat Prevention of Anti Social Activities Act, 1985
    [hereinafter referred to as `the PASA Act'] by virtue of
    an order passed by Police Commissioner, Ahmedabad city,
    Ahmedabad, on 19th February 1999 in exercise of powers
    under sub-section [1] of section 3 of the PASA Act.

    2. The   detaining authority, in the grounds of
    detention, considered that the petitioner is involved in

as many as six theft cases of auto-rickshaw. The detaining authority has also relied on statements of two witnesses, whose identity has not been disclosed and has then recorded a satisfaction that the petitioner is a dangerous person and that, his activities have resulted into disruption of public order and he, therefore, deserves to be detained under the PASA Act. The authority considered that the petitioner is in custody. In the very next sentence, it is recorded by the detaining authority that the Court has ordered the petitioner to be released on bail in all the cases and therefore, there is a likelihood of the petitioner continuing his illegal and antisocial activities after being released on bail.

3. The petitioner has approached this Court with a petition under Article 226 of the Constitution of India. The main grounds in support of the challenge are that the detaining authority has not considered the aspect of cancellation of bail u/s 437[5] of the Code of Criminal Procedure, which reflects non-application of mind on part of the detaining authority. The detention order, therefore, is vitiated.

4. Mr. Dave, learned Advocate has pressed into service only the above ground and submitted that, in light of decision of the Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th September, 1999, the petition deserves to be allowed by quashing and setting aside the impugned order.

5. Mr.H.H.Patel, learned AGP tried to justify the order by stating that the detaining authority has taken into consideration all material aspects. He was however at loss to show consideration by the detaining authority about the ground of cancellation of bail, granted to the petitioner.

6. Factually, a plain perusal of the grounds of detention indicate that the detaining authority has not considered the possibility of resorting to a less drastic remedy in the nature of resorting to section 437[5] of the Code of Criminal Procedure for cancellation of bail. This is a clear non-application of mind, as has been held by the Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th

September, 1999.

7. In view of above, the petition deserves to be allowed on this ground alone and the same is allowed accordingly. The impugned order of detention passed by the Police Commissioner, Ahmedabad city, Ahmmedabad on 19th of February, 1999 in respect of the petitioner Aamirkhan Mehboobkhan Pathan, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]
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